**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMARY SUIT NO.2216 OF 1989**

The Board of Trustees of the
Port of Bombay .. Plaintiffs.

Versus

M/s.Graphic Arts .. Defendants.

Mr.U.Makhija i/b.Mulla & Mulla for plaintiffs.

None for defendants.

**CORAM : A.M.KHANWILKAR, J.**

**DATE : 8th October, 2007.**

**P.C.:**

1. None appears for the Defendants though served. No written statement has been filed on behalf of the Defendants inspite of the order dated 29th August, 2007. My attention is invited by the Associate to the fact that some written statement is on record. However, the cause title mentioned therein does not tally with the cause title of the present case and have not been taken on record in the present suit. Besides, as mentioned earlier, none appears for the Defendants. Accordingly, I

have no option but to proceed with the matter as the Plaintiffs have filed affidavit of evidence in lieu of examination-in-chief and compilation of original documents to substantiate their claim, in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure.

2. In the substance, the case of the Plaintiffs is that the Plaintiff was required to take charge of the goods landed from ships coming to Mumbai. For that purpose, the Plaintiff was required to levy and charge wharfage, demurrage and other charges in respect of the goods landed and stored by the Plaintiff in the Docks at Mumbai as per the prescribed Scale of Rates. It is the Plaintiff's case that in or about March, 1986, the Defendants imported a consignment of 700 bags (Container No.OCLU-2308601) containing Polymethye Methaciylate Moulding Powder which was manifested at Item No.92 in the Import General Manifest No.521 dated 11th March, 1986 of the vessel M.V.NEPTUNE JASPER. It is the Plaintiffs' case that the General Landing Rate and the Last Free day of the cargo of the said vessel fell on 11th March, 1986 and 14th March, 1986 respectively.

3. Inspite of repeated requests made by the Plaintiffs, the Defendants failed and neglected to apply

for and/or to take delivery and/or remove the said consignment as the Defendants were bound to do. As a result, the Defendants became liable to pay the port trust charges to the Plaintiffs as per the specified rates. The charges in respect of the said consignment for the period from Last Free Day till the date prior to the date of the said order of confiscation amounted to Rs.78,395.57 ps. As per the provisions of Section 48(d) read with Section 59 of the Port Trust Act, the Defendants are liable to make good the said amount. The Defendants inspite of intimation received in this behalf took no steps for paying the said amount.

4. It is the case of the Plaintiffs that the Customs Authorities eventually confiscated the goods on 26th August, 1986 as the Defendants have failed to pay the amount as demanded by the Plaintiffs which has become due and payable in the sum of Rs.78,395.57 ps. as on the date of issuance of legal notice lastly sent on 27th February, 1989. The Plaintiffs have eventually filed the present suit for the following relief.

> "a) That the Defendants be ordered and decreed to pay to the Plaintiffs the sum of Rs.80,000/-

together with further interest on the sum of Rs.78,395.57 ps. at the rate of 15% per annum from the date of the suit till payment or realisation and costs of the suit."

5. The Defendants though served have not bothered to appear. No written statement has been filed to controvert the case made out by the Plaintiffs. The Plaintiffs in addition have relied on affidavit of evidence in lieu of examination-in-chief sworn by ELIAS JOHN ALMEIDA, authorised officer of the Plaintiffs dated 26th September, 2007. He has reiterated the case made out in the plaint. Besides his version, the Plaintiffs are relying on the following original documents :-

i) Original Order of Confiscation passed by the Assistant Collector of Customs dated 26th August, 1986

ii) Copy of letter addressed to the Defendant by the Plaintiffs alongwith postal acknowledgement dated 26th October, 1988.

iii) Original letter addressed to the Plaintiffs by the Defendants dated 15th November,

1988.

iv) Copy of letter addressed to the Defendants by the Plaintiffs dated 9th January, 1989.

v) Copy of letter addressed to the Defendant by the Plaintiffs dated 27th February, 1989.

6. The original documents have been filed and taken on record. The Plaintiffs in addition have relied on particulars of claim and the Working Sheet of the Bombay Port Trust Docks which indicates the liability of the Defendants to pay the sum of Rs.78,395.57 ps., which was payable as on 25th August, 1986. In other words, the Plaintiffs have shown sufficient material to establish the case made out against the Defendants. The Defendants are liable to pay such amount to the Plaintiffs towards Port Trust charges.

7. The next question is about the rate of interest. The Plaintiffs are demanding interest @15% per annum. However, there is nothing on record to show that the same was agreed rate of interest between parties. The Plaintiffs have claimed interest @15% per annum in the legal notice sent by them to the Defendants. The

Defendants have not responded to the said legal notice. It cannot be disputed that the transaction in question and the liability of the Defendants arose out of the commercial transaction. In the circumstances, the Plaintiffs, in my opinion are entitled to interest @12% per annum on the principal amount.

8. Accordingly, the suit is decreed to the following terms :-

> "The Defendants are ordered and decreed to pay to the Plaintiffs a sum of Rs.78,357.57 ps. alongwith interest @12% per annum from the date of institution of the suit that is 12th March, 1989 till realisation of the same. The Plaintiffs are further entitled for costs of the suit."

9. Decree be drawn up accordingly in the above terms. Certified copy expedited.

**(A.M.Khanwilkar, J.)**